

#### § 405.1863

available to all parties and to the Health Care Financing Administration.

#### § 405.1863 Administrative policy at issue.

Where a party to the Board hearing puts into issue an administrative policy which is interpretative of the law or regulations, the Board will promptly notify to the Health Care Financing Administration.

#### § 405.1865 Record of Board hearing.

A complete record of the proceedings at the hearing shall be made and transcribed in all cases. It shall be made available to the parties upon request. The record will not be closed until a decision has been issued.

#### § 405.1867 Sources of Board's authority.

In exercising its authority to conduct the hearings described herein, the Board must comply with all the provisions of title XVIII of the Act and regulations issued thereunder, as well as HCFA Rulings issued under the authority of the Administrator of the Health Care Financing Administration (see § 401.108 of this subchapter). The Board shall afford great weight to interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by HCFA.

[48 FR 22925, May 23, 1983]

#### § 405.1869 Scope of Board's decision-making authority.

The Board shall have the power to affirm, modify, or reverse a determination of an intermediary with respect to a cost report and to make any other modifications on matters covered by such cost report (including modifications adverse to the provider or other parties) even though such matters were not considered in the intermediary's determination. The opinion of the majority of those Board members deciding the case will constitute the Board's decision.

#### § 405.1871 Board hearing decision and notice.

(a) The Board shall, as soon as practicable after the conclusion of its hearing, render a written decision based

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upon the record made at such hearing, the record established in support of the determination of the intermediary (see § 405.1803), and such other evidence as may be obtained or received by the Board. Such Board decision shall be supported by substantial evidence when the record of the Board hearing is viewed as a whole and shall cite applicable law, regulations, and HCFA Rulings. A copy of the decision shall be mailed to all parties to the hearing at their last known addresses and, at the same time, to the Administrator and HCFA.

(b) The decision of the Board provided for in paragraph (a) of this section shall be final and binding upon all parties to the hearing before the Board unless it is reviewed by the Secretary in accordance with § 405.1875, or revised in accordance with § 405.1885.

[39 FR 34515, Sept. 26, 1974, as amended at 41 FR 52051, Nov. 26, 1976. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 48 FR 45773, Oct. 7, 1983]

#### § 405.1873 Board's jurisdiction.

(a) *Board decides jurisdiction.* The Board decides questions relating to its jurisdiction to grant a hearing, including (1) the timeliness of an intermediary determination (see § 405.1835(c)), and (2) the right of a provider to a hearing before the Board when the amount in controversy is in issue (see §§ 405.1835(a)(3) and 405.1837).

(b) *Matters not subject to board review.* (1) The determination of a fiscal intermediary that no payment may be made under title XVIII of the Act for any expenses incurred for items and services furnished to an individual because such items and services are excluded from coverage pursuant to section 1862 of the Act, 42 U.S.C. 1395y (see subpart C of this part), may not be reviewed by the Board. (Such determination shall be reviewed only in accordance with the applicable provisions of subpart G or H of this part.)

(2) The Board may not review certain matters affecting payments to hospitals under the prospective payment system as provided in § 405.1804.

[48 FR 39836, Sept. 1, 1983]